

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

In re: OHIO EXECUTION
PROTOCOL LITIGATION,

: Case No. 2:11-cv-1016

Chief Judge Edmund A. Sargus, Jr.
Magistrate Judge Michael R. Merz

This Order relates to Plaintiffs
Romell Broom and Robert Van Hook,

**DECISION AND ORDER DENYING WITHOUT PREJUDICE
MOTION FOR LEAVE TO CONDUCT DISCOVERY**

This case is before the Court upon the Motion of Plaintiffs Romell Broom and Robert Van Hook for Leave to Conduct Discovery (ECF No. 1413). Defendants oppose the Motion (ECF No. 1430), and Plaintiffs have filed a Reply in support (ECF No. 1437).

Plaintiffs seek discovery “related to Defendants’ efforts, on or before November 15, 2017, to execute Plaintiff Alva Campbell, Jr.,” (ECF No. 1413). After those efforts were unsuccessful, the Governor issued a Warrant of Reprieve of Campbell’s execution to June 5, 2019 (ECF No. 1376-1). Campbell filed an amended and supplemental complaint on January 4, 2018, and the instant Motion followed on February 1, 2018. However, before the Court had ruled on the Motion, Campbell died of natural causes and was dismissed as a plaintiff (ECF No. 1443).

As Plaintiffs note, Fed. R. Civ. P. 26(b)(1) allows discovery “regarding any non-privileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case. . . .” The relevance of the proposed discovery to any renewed attempt to execute Campbell was obvious to the Court. However, the relevance of the Campbell attempts to the claims of other parties is not. Because Romell Broom is the only living American survivor of an attempted execution,¹ relevance to his claims can be hypothesized, but has not been set out. Van Hook is a party to the Motion, but is mentioned only in the caption, and no relevance to his claims is made. There may be “many other” Plaintiffs to whose claims this proposed discovery is relevant, but who are they, what are the relevant claims, and what is the demonstrated connection between those claims and what happened with Campbell? None of this is shown.

The natural death of Campbell certainly changes the landscape of discovery about the attempt to execute him. The Motion for Leave to Conduct Discovery is DENIED without prejudice to its renewal with a sharpened focus on what the discovery will be relevant to. The Court is, at least on a preliminary basis, attracted to the suggestion made by Defendants’ counsel that paper discovery would be conducted first so as to focus on which persons need to be deposed.

March 6, 2018.

s/ *Michael R. Merz*
United States Magistrate Judge

¹ As reported in the press at the time of the Campbell attempt, the only other two being Campbell and Willie Francis, who was successfully executed on the second try in 1947.